

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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UNITED STATES OF AMERICA :

v. : Criminal Docket No. 03-00046-JAW

JEFFREY SHIELDS, :  
Defendant :

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S REQUESTS TO TRANSFER  
PROBATION

1. INTRODUCTION

Defendant, Jeffrey Shields, was convicted in this case of one count of possession of child pornography pursuant to 18 U.S.C. § 2252A. On September 30, 2003, he was sentenced to 57 months imprisonment, followed by 3 years of supervised release (with conditions). Prior to being released, however, he was held and eventually civilly committed pursuant to 18 U.S.C. §§ 4247-4248 (the "Adam Walsh Act"). Mr Shields was conditionally discharged from his civil commitment on June 9, 2011. *See* Order of Judge Saris (attached Exhibit A).

The parties agreed that Mr. Shields, upon discharge, would essentially be supervised in two respects: 1) he was still on supervised release pursuant to the criminal conviction (which is subject to terminate in February, 2012)<sup>1</sup>; and 2) he was subject to the additional conditions imposed by Judge Saris in the June 9, 2011 order. At this point, Mr. Shields has not yet been released from his civil commitment; his discharge is conditional and will only be final by order

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<sup>1</sup> The Government, and probation, have taken the position—adopted by Judge Saris—that Mr. Shields' supervised release began to run the day he was civilly committed on February 12, 2009 and thus will expire three years from then.



of the presiding judge in that matter, Judge Saris.

Upon discharge, Mr. Shields remained in Boston, MA. He resided at the Coolidge House, a Halfway House run by the Bureau of Prisons. Although he had initially requested to reside in Maine, he was unable due to the unavailability of a bed at the Pharos House in Maine. During that time, he was supervised by Jeffrey Smith, a probation officer in the District of Massachusetts, Boston. Mr. Smith ostensibly enforced both the conditions of Mr. Shields' supervised release pursuant to the criminal conviction and the conditional discharge pursuant to the civil commitment. On August 1, 2011, Mr. Shields' supervision was transferred to Maine. There, he has been supervised by Scott Hastings and Lincoln Hathaway.

On September 14, 2011, Mr. Shields submitted a letter to his Officer Hathaway requesting he be transferred back to Boston. *See* Letter, 9.14.11 (Attached as Exhibit B). Because Mr. Shields is presently being supervised in two capacities (his criminal case and his civil commitment), counsel was unsure how to proceed with the request. After consultation with the parties, and requesting a status hearing in Massachusetts before Judge Saris, Judge Saris ordered the parties attempt to litigate the matter in the first instance in Maine: "Petitioner shall first seek a Status Conference in Maine to see if the Court can order better services, and if necessary, concurs to a transfer of jurisdiction." *See United States v. Shields*, 07-cv-12056-PWS (D. Mass.), Order re: Docket Entry 271 (Attached as Exhibit C).

## 2. LEGAL STANDARD

This court has the power to transfer Mr. Shield's supervised release. Transfer of supervised release from one district to another is governed by 18 U.S.C. § 3605:

A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release, or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the



same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer or releasee that are permitted by this subchapter or subchapter B or D of chapter 227.

Section 3605 “gives a court **discretion** to order a **transfer**, but conditions transfer upon the acceptance of **jurisdiction** by the court to which the transfer is made, and upon selection of a district to which the probationer was required or permitted to proceed.” *United States v.*

*Fernandez*, 379 F.3d 270, 272 (5th Cir. 2004), quoting *United States v. Ohler*, 22 F.3d 857, 858-59 (9th Cir.1994) (emphasis in original).

It is clear Mr. Shields is “permitted to proceed” in the District of Massachusetts, should this court transfer his supervision. Mr. Shields has already been supervised, for some period of time, in Massachusetts because of his civil commitment originating in that court. *See Fernandez*, 397 F. 3d at 273 (defendant was clearly “permitted to proceed” with probation in the district where he committed a new offense, even if he was originally prohibited from traveling there under his conditions of supervised release). Thus, the only issue is whether this court should transfer the matter back to Massachusetts.<sup>2</sup>

As noted in the September 14, 2011 letter, and as will hopefully become clear at the hearing, Mr. Shields is having a difficult time adjusting to his life in Maine. For someone who is in such a unique position—having undergone extensive and intense treatment while being civilly committed—he is very sensitive to the risky situations that he should avoid. At this point, Mr. Shields feels extremely isolated and alone in Maine; it is not so much the conditions, but his total lack of meaningful contact, that is making it difficult for him to feel comfortable in Maine. He is

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<sup>2</sup> While the probation office in Massachusetts is opposed to the transfer, it is not clear what relevance, if any, that has. For one, the statute only requires that transfer be conditioned upon the “concurrence of the court” to which transfer is sought. Counsel has been unable to locate any case that defines “court” as used in 18 U.S.C. § 3605. However, it is clear that, statutorily, a “court” is a separate entity from a “probation officer.” *See e.g.* 18. U.S.C. §§ 3601-3603 (a probation officer is appointed by the court and reports to the court).



not generally treated well by the other men at the Pharos house; he is given no opportunity or leeway to socialize; and he is completely cut off from any meaningful contact with the Gay, Bisexual, Lesbian, and Transgendered (“GBLT”) community. In Boston, he felt extremely supported by his treating therapists and the GBLT community. These feeling of isolation and depression are low risk situations that Mr. Shields has been trained to recognize and avoid. By seeking transfer back to Boston, Mr. Shields is essentially calling out for help.

### 3. IMPACT OF CIVIL COMMITMENT

It is unclear what the full impact of Mr. Shields’ civil commitment, and conditional discharge, should have. However, it should not be ignored. Mr. Shields’ conditional discharge provides more onerous conditions than his supervised release; it will also be in effect longer (and could theoretically be in effect forever). Additionally, Judge Saris has become intimately familiar with Mr. Shields, his case, and his treatment needs. Thus, to the extent this Court is considering denying Mr. Shields’ request, it should not do so without at least first assuring that such a decision is in Mr. Shields’ therapeutic interest.

When Judge Saris originally approved of Mr. Shields’ release to Massachusetts, it was with the full support of his treating and evaluating psychologists. Both approved of the conditions and the resources available in Boston. No one from Mr. Shields’ therapeutic community was consulted when he was transferred to Maine. Admittedly, Mr. Shields’ transferred occurred quickly due to a safety issue (not due in part to anything he did). That said, his treating therapists, and probably Judge Saris, should be consulted if this Court intends on denying a request that is based largely on psycho-social issues and stressors.



Dated: October 25, 2011

Respectfully submitted,  
By Petitioner:

/s/ John G. Swomley  
John G. Swomley, BBO # 551450  
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**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) in this matter.

/s/ John G. Swomley  
John G. Swomley



# **EXHIBIT A**



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Petitioner,

v.

JEFFREY SHIELDS,

Respondent.

CIVIL ACTION NO. 07-12056-PBS

**ORDER OF CONDITIONAL RELEASE PURSUANT TO 18 U.S.C. § 4248(e)**

By Order dated February 12, 2009 [D. 199], Jeffrey Shields was committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4248(d), until his condition was such that he would no longer be sexually dangerous to others, or, until his condition was such that he would not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment.

On June 10, 2010, pursuant to 18 U.S.C. § 4247(h), Shields moved for a hearing on whether he could be safely released to the community. [D. 219].

This Court, having reviewed the opinions of both treating and forensic psychologists, and after hearing the evidence, grants Shields' motion and concludes that Shields has recovered from his mental disease or defect to the extent that his release under a prescribed regimen of medical, psychiatric or psychological treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, and may be conditionally released under the following prescribed regimen of medical, psychiatric and psychological care as set forth in this Order.



Therefore, it is hereby ORDERED, pursuant to the provisions of 18 U.S.C. § 4248(e) that Shields be conditionally released under the following specific regimen of care and treatment as detailed and prescribed by his mental health providers:

1. Shields' whereabouts will be monitored using Global Positioning System (GPS) for a period of no less than six months.<sup>1</sup>

2. Shields will not reside with any minors. Shields residence should not be in the immediate area where minors congregate without parental or adult supervision.

3. Shields will reside in a structured living environment where he can receive case management and offender reentry services such as occupational counseling and assistance, personal finance management, etc. This period of structured living will be for at least one year.

4. Shields' contact with any minors must be approved by his community release team coordinator. Contact is defined herein as in-person contact, or via correspondence, telephone, or any other electronic means.

a. If deemed necessary by the release team, Shields' contact with minors will be directly supervised by a responsible adult or chaperone. This person must be approved by the community release team. The responsible adult should:

i. Be made explicitly aware of Shields' criminal history and sexual risk factors;

ii. Receive explicit instructions to immediately report any deviations from the terms of this release plan.

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<sup>1</sup>The United States Probation Office in Massachusetts does not have the capability to implement this condition. It is the Court's understanding, and Order, that this condition will be implemented by the United States Probation Office in Maine should Shields transfer to the Pharos House in Maine.



5. Shields will not reside with anyone who presents a significant risk factor, sexual or otherwise, as judged by his release team.

6. Shields will provide a list of all potential visitors to his home. The appropriateness of each visitor should be carefully assessed by his community release team.

7. Shields will refrain from accepting or seeking civic, religious, or other voluntary positions where he may be in a position of authority or influence over children and their families.

8. Shields will not associate with anyone, except while in a treatment program or structured living environment (e.g., sober living house), who is known to be a sex offender or someone who condones or supports sexual abuse and exploitation of others.

9. The following may threaten the management of Shields' sobriety and/or sexual deviance disorder. Accordingly, Shields is prohibited from possessing:

- a. Sexually explicit and/or obscene materials or paraphernalia, whether written, printed, photographed, electronic, computerized, or recorded;
- b. Anything that overly promotes or glamorizes criminal activity; and
- c. Anything that overly promotes or supports child-adult sexual relations.

10. Shields will not frequent, patronize or be seen in or around places or establishments that promote sex trade or sell pornography.

11. Shields will not loiter in public restrooms or around places where minors congregate, such as arcades, schools, amusement parks, skateboard parks, water parks, etc.

- a. In order to attend an event where unsupervised minors may be present, Shields must first obtain permission from his release team and have an approved chaperone.

12. Shields will not operate any personal computer or other electronic device (e.g., cell



phone, gaming system) with Internet access, unless it has been approved by the community release team; and

- a. Appropriate monitoring and filtering software have been installed, and/or
- b. Appropriate user controls/restrictions have been placed in the device.

13. Shields' employment should be carefully screened by the release team. His employer should be notified of relevant risk factors, as determined by the community release team.

- a. His job should not permit direct contact with or supervision of minors;
- b. He should not work (ideally) in any position that requires him to handle or serve alcohol<sup>2</sup>;
- c. If his job requires Internet access, additional conditions may be stipulated (e.g., placing his workstation in view of others, installing monitoring/filtering software).

14. Shields will participate in the following aftercare treatment and support services:

- a. Weekly attendance in Alcoholic Anonymous meeting;
- b. Weekly attendance in an aftercare, relapse prevention-focused group for sex offenders;
  - i. The treatment provider should be a mental health professional judged to have adequate clinical experience treating sex offenders;
- c. continued psychopharmacological treatment with appropriate psychiatric monitoring;

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<sup>2</sup> Shields should aspire to be employed in an occupation where he does not have to handle alcohol. However, if other jobs are not available, he should be permitted to be employed in the restaurant or hospitality industry at least on a temporary basis or until he can find another job.



- i. The current treatment includes fluoxetine (Prozac) 40 mg/day; and
  - d. Individual therapy, as needed.
- 15. Shields should receive regular Maintenance Polygraph Examinations to monitor his compliance with the conditions of conditional release.
  - a. The exams should be conducted approximately once every six months (or more frequently, as determined by the release team).
- 16. Shields will have a late night curfew for the first six months of conditional release (10 p.m. to 6 a.m.). The curfew should be modified and/or discontinued in a manner consistent with his clinical progress and successful community reintegration.
- 17. Shields will keep a driving log which documents his vehicular travel destination, mileage, routes and times. This log should be turned in to his release team coordinator on a bi-weekly basis.
- 18. Shields will keep a weekly log of all activities and locations where those activities took place. This log should be turned in to his release team coordinator on a weekly basis.
- 19. Shields will not consume or possess alcoholic beverages.
  - a. He will also be subject to random breathalyzer tests and urinalysis (also to screen for drug use).
- 20. Shields shall at all times readily submit to a search of his residence, and of any other premises under his dominion and control, by his supervising officer, upon the officer's request when the officer has reasonable basis to believe that such a search will lead to the discovery of evidence of violation of the terms of supervised release, including pornographic materials that Defendant is prohibited from possessing under the rules of his sex offender treatment program.
- 21. Shields will remain under the supervision of the United States Probation Office until



he is discharged from these conditions.

22. Any party requesting modification or termination of the conditions of release shall submit adequate documentation supporting the request through the United States Probation Office for a determination.

23. The United States Marshals Service shall be notified to return Shields to the custody of the Attorney General if it is determined that Shields has violated any conditions which are established for him.

24. Shields shall comply with other conditions of release imposed by the District of Maine in connection with Shields' supervised release.

It is further ORDERED, pursuant to the provisions of 18 U.S.C. §3603(8) and (10), that Shields' release under these conditions shall be supervised by United States Probation, that United States Probation shall report to the Court as provided in those provisions, and, that United States Probation shall also provide annual reports to this Court concerning Shields' compliance with the conditions of release.

It is further ORDERED that United States Probation may seek modification of these conditions, and, that Shields may petition the Court for modification of these conditions.

SO ORDERED, on this the 9 day of June, 2011.

A handwritten signature in cursive script, appearing to read "Paul B. Sarris".

United States District Court



# **EXHIBIT B**



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September 14, 2010

Lincoln Hathaway  
U.S. Probation Office  
400 Congress Street  
Portland, ME 04101

Re: Jeffrey Shields (Transfer of Probation)

Dear Probation Officer Hathaway,

I am writing on behalf of Jeffrey Shields to formally request that his probation be transferred from your office to the Boston, MA office. As you know, Mr. Shields is currently on supervised release for a criminal matter in Maine and, simultaneously, on conditional release for his civil commitment out of Boston, MA. His conditions of release are guided, largely, by the conditions imposed through his civil commitment by Judge Saris here in Boston. The conditions were carefully crafted by Dr. Hernandez, the Bureau of Prisons' treating and evaluating psychologist, and approved by the Court. They are also more onerous than those imposed in the criminal matter.

Unfortunately, it appears that the circumstances in Maine do not give full effect to the conditions that all parties believed were necessary to properly supervise Mr. Shields. Additionally, Mr. Shields feels strongly that, in order to comply fully with the spirit and letter of the conditions, he needs access to more resources than are offered in Maine. Based on his experience in Boston, he was getting those resources before and can have access to them again if he returns here. Accordingly, it appears a transfer back to Boston is appropriate.

Perhaps the most important conditions involve Mr. Shields' aftercare treatment. The treatment he is receiving in Maine is, quite frankly, far less extensive and effective than what he had access to in Boston. In Boston, he was working with Dr. John Cusak for both individual and group counseling. Dr. Cusak is a highly experienced psychologist. The group Dr. Cusak runs was geared exactly towards Mr. Shields' need: it was a highly sophisticated, sex offender therapy group. In Maine, the group Mr. Shields attends is led by a licensed social worker. Moreover, the group is extremely large (approximately 20 men) and the most that is ever discussed are here and now problems. Each man, including



Mr. Shields, has an extremely limited time to present and when they do it is limited to everyday problems. The group is better seen as a "check-in" group and is not providing him with any substantive therapy.

Additionally, he was scheduled to meet with Dr. Cusak for weekly individual sessions. In Maine, he has only met with his individual therapist once and she indicated that she would be meeting with Mr. Shields, at most, once or twice a month.

In Boston, Mr. Shields had also met with Dr. Martin Kafka, a nationally renowned expert psychiatrist. Mr. Shields has psycho-pharmacological needs that Dr. Kafka is especially trained to deal with. Dr. Kafka had already given Mr. Shields a range of testing and had recommended further services. In Maine, Mr. Shields has never seen a psychiatrist and does not even have an appointment to meet with one.

Thus, the kind of aftercare available in Maine for Mr. Shields is nowhere as good as what is available in Boston. Regardless of quality, it is simply not enough to provide Mr. Shields with what he needs.

In Boston, Mr. Shields had health insurance (Mass. Health). This allowed him to obtain, free of charge, necessary medications and other medical services. In Maine, he has no health insurance. The only way he is able to obtain his needed prescriptions is by going to the office of general assistance to get a voucher, a process that is lengthy and unfeasible should he ever find employment. And, regardless, without health insurance he is unable to access any medical assistance, something which was a great benefit to him in Boston.

Lastly, one of the biggest problems in Maine is that Mr. Shields lacks any real support system. In Boston, he was attending two Sex and Love Addicts Anonymous (SLAA) meetings a week; in Maine, that is not available. In Boston, he was attending seven Alcohol Anonymous (AA) meetings a week specifically for the Gay, Bisexual, Lesbian, and Transsexual ("GBLT") community; in Maine, he is only permitted to attend regular AA meetings and one GBLT meeting a week. These meetings, in Boston, were an important source of support for Mr. Shields as he was interacting with persons who had a better understanding of him and his problems. In Maine, this is simply not the case. He feels uncomfortable at his AA meetings and at the GBLT meetings, he is not allowed to arrive early or stay late and has been unable to make any significant connections.

Mr. Shields feels extremely isolated in Maine and without access to people, therapists, or resources to help him. This is a feeling he did not have in Boston. While Mr. Shields is not in any danger to reoffend, I think all involved can agree that it is not healthy for him to feel isolated, potentially depressed, and without the appropriate therapeutic outlets to deal with his issues. Mr. Shields needs a good support network like what he was getting in Boston.

Through his treatment, Mr. Shields has been taught to recognize problematic situations and address any issues they present long before they turn into a more serious

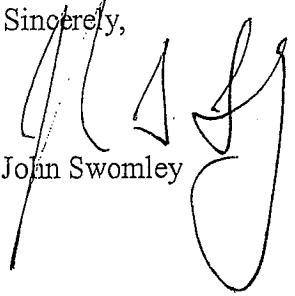


problem. He, more than anyone, knows that what he is getting in Maine will, in the long run, evolve into a more drastic situation. Everyone wants Mr. Shields to succeed. It makes little sense to ignore his request for help.

My understanding is that in order to have his probation transferred, he first needs to make a formal request. Please consider this that request. If Probation is not inclined to transfer his case to Boston, please notify me as soon as possible so we can file something with the Court.

Please feel free to contact me with any questions.

Sincerely,

  
John Swomley

cc: Jeff Smith, US Probation Boston  
AUSA Mark Grady  
AUSA Eve Stacey  
Judge Patti Saris



# EXHIBIT C



Eric Tennen

From: ECFnotice@mad.uscourts.gov

Sent: Tuesday, October 04, 2011 2:55 PM

To: CourtCopy@mad.uscourts.gov

Subject: Activity in Case 1:07-cv-12056-PBS United States of America v. Shields Order on Motion for Hearing

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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United States District Court

District of Massachusetts

### Notice of Electronic Filing

The following transaction was entered on 10/4/2011 at 2:55 PM EDT and filed on 10/3/2011

Case Name: United States of America v. Shields

Case Number: 1:07-cv-12056-PBS

Filer:

**WARNING: CASE CLOSED on 03/08/2011**

Document Number: 272

### Docket Text:

Judge Patti B. Saris: **ENDORSED ORDER** entered re [271] Motion for Hearing: "Petitioner shall first seek a Status Conference in Maine to see if the Court can order better services, and if necessary, concurs to a transfer of jurisdiction." (Anderson, Jennifer)

**1:07-cv-12056-PBS Notice has been electronically mailed to:**

Judith H. Mizner [judith\\_mizner@fd.org](mailto:judith_mizner@fd.org)

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**1:07-cv-12056-PBS Notice will not be electronically mailed to:**

10/17/2011